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DOCUMENTS

IN RE: RIGHTS OF LAND OWNERS WITH REFERENCE TO OPERATION OF AIRCRAFT*

We submit the material contained herein pursuant to the request of the Executive Committee, made at its meeting of November 12, 1929, that we consider the question of the protection of property owners from the operation of airplanes, and advise you whether any action should be taken by the National Association in this regard.

On August 15, 1929, the Executive Secretary sent us a copy of a letter from George L. Guinther of Buffalo, New York, raising this question. In our reply of August 17 to the Executive Secretary, we directed his attention to a paper on this subject which I delivered before the Nebraska State Bar Association at Omaha. In this paper I discussed the advisability of the courts' arriving at some rule which would protect the property rights of the owner and yet at the same time not interfere with the development of aviation. I called attention to the fact that aerial navigation should be at a sufficient height so as not to interfere with the use of the space by the owner thereof. I also discussed the rule of damages which should apply in the case of injury to persons or property from the operation of aircraft. These matters will receive further discussion in this report:

I. There are four principal enactments with respect to which we direct your attention:

- (a) Convention of 1919 (adopted by European nations, signed by the United States, but not ratified by the Senate).
- (b) Air Commerce Act, 1926, adopted by Congress.
- (c) Uniform State Law of Aeronautics.

This act has been adopted in the following states: Delaware, Idaho, Indiana, Maryland, Michigan, Nevada, North Dakota, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Arizona, Minnesota, Missouri, Montana, New Jersey, North Carolina, Pennsylvania, South Carolina, Wisconsin, and by Hawaii.

II. One of the questions discussed by nations has been the sovereignty of the air. Two principal viewpoints have been put forward; namely, freedom of the air and sovereignty of the air. Prior to the war a number of nations contended that following the analogy of the sea, the air is free. Other nations contended for the sovereignty of the air. After the war this point of view prevailed, and the high contracting parties in the Convention of 1919 recognized that every power has complete and exclusive sovereignty over the air space above its territory.

The Air Commerce Act, passed by Congress in 1926, declares that the Government of the United States has, to the exclusion of all foreign nations, complete sovereignty of the air space over the lands and waters of the United States, including the Canal Zone.

*Opinion of the General Counsel for the National Association of Real Estate Boards to the Executive Committee and the Board of Directors of the National Association, delivered January 15, 1930.

The Uniform State Law of Aeronautics, which was drafted by a committee, representing both the National Conference of Commissioners on Uniform State Laws and the American Bar Association, of which I was a member, provides that sovereignty of the air space above the lands and waters of the state is declared to rest in the state, except where granted to or assumed by the United States pursuant to a constitutional grant from the people of the state.

III. Another question which has provoked a great deal of discussion for years is who owns the air space. With respect to this question, there have been principally two points of view:

(a) The *ad coelum* theory which comes from the Latin maxim, "Cujus est solum, ejus est usque ad coelum," the meaning of which is: "To whomsoever the soil belongs, he owns to the sky and also to the depths.

The proponents of the *ad coelum* theory contend that this Latin maxim has been adopted into the common law and recognized at all times; that it is to be construed strictly, and the courts have never indicated that it is to be construed in any other way.

The *opponents* of the *ad coelum* theory contend there is no case in the common law involving it, in which it has been applied to any space above the land that was not appurtenant to or used in connection with the surface.

(b) The *ad coelum* theory does not extend the title of the owner of the land into that space which ordinarily is usable for flight.

Various other theories have been put forward whereby the *ad coelum* doctrine might be circumvented.

It has been suggested that the safe plan is for the people to grant to the state or the federal government the use of the superincumbent air. Another suggestion has been that the air be taken by the exercise of eminent domain. Another suggestion, which is approved by George B. Logan, Esq., "Aircraft Law Made Plain," is that the *ad coelum* theory be accepted, but that it be applied with the test of reasonableness.

IV. With respect to this question, "Who owns the air?" the Air Commerce Act and the Uniform State Law of Aeronautics are interesting.

The air Commerce Act provides, in Section 10:

"As used in this Act, the term 'navigable air space' means air space above the minimum safe altitudes of flight prescribed by the Secretary of Commerce under Section 3, and such navigable air space shall be subject to a public right of freedom of interstate and foreign air navigation in conformity with the requirements of this Act."

The Uniform State Law of Aeronautics provides that:

"The ownership of the space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in Section 4" (of the Act).

It has been pointed out that such legislation is probably valueless if the owner of the land actually owns the air space above the land to the zenith; because if the air space is so privately owned, such legislative pronouncement could not destroy title. However, though the question of who owns the air is interesting, there is little likelihood that it will in any way impede the development of aeronautics.

V. There are two general problems of interest to the owner of the land.

(a) *Trespass upon his property.* If the owner of the surface owns the air space to the zenith, then flying over his land would be a trespass.

The Air Commerce Act of 1926 (Section 10) defines 'navigable air-space' to mean:

"airspace above the minimum safe altitudes of flight prescribed by the Secretary of Commerce under Section 3 . . ."

The Uniform State Law of Aeronautics provides (Section 4):

"Flight in aircraft over the lands and waters of this State is lawful, unless at such low altitudes as to interfere with the then existing use to which the land or water, or the space above and land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath."

The Uniform State Law of Aeronautics even goes so far as to provide that landing on the lands or water of another is not unlawful where it is a forced landing. However, damages may be collected for any injury inflicted by such forced landing.

Hotchkiss, in his treatise on "Aviation Law," (p. 19) sets out the views of some of the writers on Torts, on the question whether or not flying over one's land constitutes a trespass. He quotes Pollock as saying:

"The scope of possible trespass is limited by that of effective possession, which might be the most reasonable rule."

There is a question whether or not "effective possession" will extend into any of the air space above that used or usable for or in connection with a building. It should extend to space which for some reason or other is of *value* to the owner of the surface. Burdick, in his work on Torts, suggests that a flight at a low altitude would be a trespass, although at a great height there would be none. Salmond is quoted as saying:

"There can be no trespass without physical contact with the land . . . and that a mere entering into the air space above the land is not an actionable wrong unless it caused some harm, danger or inconvenience to the occupier of the surface."

Hotchkiss also quotes a continental jurist as putting the application of the *ad coelum* theory in this way:

"It is not the existence of the right which is doubtful, but the nature, the extent of the right."

Dauids, in "The Law of Motor Vehicles," says that under the *ad coelum* theory the owner of the surface has the right to appropriate the air permanently. The inference is that the temporary use of the air space by flying through it is not a trespass; or at any rate, if such flying is attended with the absence of injury to the owner of the surface, there would be no actionable wrong.

Hotchkiss, "Aviation Law" (p. 27), gives it as his opinion that the clearest expression of the subject is found in the German Civil Code. In this Code it is recognized that the right of the owner of the surface extends to the space above and into the earth under the surface; and it is said:

"However, the owner cannot prohibit interferences which take place at such height or depth that he has no interest in their exclusion."

This formula seems to be a safe and desirable one. It is somewhat broader than the limitation of "effective possession" or "usable space." It recognizes the fact that there may exist or arise situations under which the owner of the surface may have some interest in the exclusion of any interference with the air space at a height above "effective possession" or "usable space." We have no doubt that there is or may be space above air space of "effective possession" which is of value to the owner of the surface, and it should be regarded as a trespass to interfere with that space by flying through it.

In this connection it is of some interest to note the position taken by Carl Zollmann in his book "Law of the Air" in regard to this maxim. Zollmann comes to the conclusion that the maxim is one for the better enjoyment of the land and refers to the air space only in so far as it is appurtenant to the land. Zollmann says (p. 14):

"The most that can be conceded is that the maxim tends to state that within lines extended through all points of the soil, ownership to the sky is a space of preferential use to the owner of the soil *which is interfered with only when the enjoyment of the soil is diminished.*" (The italics are ours.)

Zollmann then points out that the temporary use of the air space by an airplane is quite different from some permanent obstruction.

(b) *Nuisances.* There are a number of uses of aircraft which may be regarded as nuisances in so far as the owner of the land is concerned.

(1) *Flying at low heights.*

In order that one may be entitled to an action in trespass, he must be the owner of the land. It is not necessary that one be the owner in order to be affected by a nuisance. Anyone who is injured by reason of nuisance may recover damages for such injury. As has been pointed out, the Air Commerce Act of 1926 and the Uniform State Law of Aeronautics deal with the question of low flying. The Air Commerce Act of 1926 provides that the navigable air space means that space above minimum safe altitudes of flight. The Uniform State Law of Aeronautics provides that in order for flight over the lands and waters to be lawful, it must be at such a height as not to interfere with the then existing use to which the land or water, or the space above it, is put by the owner.

There is no reason why these rules should not apply to land that is adjacent to airports and landing fields.

(2) *Flying in such manner as to be imminently dangerous to persons or property.*

Flying of this kind may constitute a nuisance as well as a trespass. Such flying undoubtedly may be prevented and the property owner may recover damages for any injuries sustained by reason of flying of this character.

(3) *Disturbance by noise.*

There are many cases in which damages have been awarded to private property owners because of noise. In the case of airplanes the question of noise will be of importance, particularly with reference to airports, aviation schools, and landing fields. Generally, air pilots prefer to fly at a reasonable

height. When aircraft is at a reasonable height, the noise probably is not so great as to constitute a nuisance. It is probably true that public interest will outweigh private inconvenience, in the case of flight at a reasonable height, and the courts probably will refuse to enjoin such flying where complaint is made against it on the ground of nuisance created by noise. It will be a question of fact as to whether it is really a nuisance.

(4) *Privacy.*

Aircraft may become a nuisance by reason of its operation in such manner as to violate the surface owner's right of privacy. It has been said (21 R. C. L. 1196):

"The right of privacy is the right to be let alone; the right of a person to be free from unwarranted publicity."

Privacy has also been defined as the right to live without having one's name, picture, or statue, made public against his will. This right is purely modern and the assertion of it seems to have been made for the first time in 1890. Various infringements of the rights of a person related to or in the nature of the right of privacy always have been regarded as nuisances and therefore regarded as actionable as such. There may be some question as to whether the doctrine of privacy, as it has been developed so far, may be applied to any of the operations of an airplane; however, a number of the writers on the law of aviation refer to it.

Zollmann makes mention of it. He speaks of the Spanish form of house, the patio, which in a way is an enclosed garden or estate, without a roof. Zollmann doubts that any flying over such a place will constitute an actionable invasion of a man's privacy unless the aeronaut should hover about the premises with the express purpose of eavesdropping. Zollmann says:

"The right of privacy may, therefore become the subject of law-suits in connection with aircraft."

It would seem, however, from what he has to say, that the right of privacy would be involved only when the flyer hovered over the premises apparently for the purpose of eavesdropping.

"In this country, the right of privacy is usually well preserved by one's roof," Logan says in "Aircraft Law—Made Plain." This is not the fact in connection with country estates in places where much of the living is out-of-doors, or in our southern states, or California, for like reasons.

No matter what the strict application of the doctrine of privacy may be, there are many who believe that where a person develops a country estate or gardens which are used to a great extent by the members of the family, there should attach to these places a reasonable degree of privacy, even in so far as aircraft is concerned.

An interesting case, involving to some extent this point, but also involving questions of trespass and nuisance, is now pending in the Supreme Judicial Court of Massachusetts. It is *Smith v. New England Aircraft Co.*, decided by the Superior Court (but not officially reported). The plaintiff was the owner of a country estate known as Lordvale, consisting of about 400 acres of land, which had been well improved as a country home. The place was established about 1893. In 1927, an adjoining parcel of land of 95 acres was acquired and converted into an airport. The complaint was to the

effect that the defendants continued to fly over the plaintiff's land and buildings in such an unreasonable and noisy manner as to constitute a nuisance and that the acts complained of not only annoyed the plaintiff and his family, servants and guests, but also worried his horses and other livestock. Flying over these premises was admitted, although there was no evidence of any unreasonably low flying. The various noises complained against at the airport were admitted. However, the distance from plaintiff's house to the nearest point of the flying field was some 3000 feet. The case was referred to a Master who reported at great length and found against the plaintiff, to the effect that the operations at the airport and the flying over his premises did not constitute a nuisance. In regard to trespass, the Master held that whether or not flying over the domains of the landowner was a trespass was a question of law, the decision of which he left to the court.

(5) *Dropping of Sewage.*

The matter of dropping objects of hard substance from an airplane is covered generally by rules which heretofore have been promulgated. One writer refers to the question of the falling sewage or any objectionable substance from aircraft. It is pointed out that in many instances this can become a nuisance. No solution has been offered on the point; but it is stated that it is a question which undoubtedly will have to be dealt with. There should be some regulation which will adequately protect not only the owner of the surface, but all people on the surface in this regard.

VI. *Liability to persons and property on the ground.* Three theories have been put forward as to liability to the persons and property on the ground.

(a) Recovery is allowed only by the proof of negligence on the part of the owner or operator of the aircraft. It is rather generally recognized that this rule is unfair to the person who is injured or whose property is damaged. About all he would be able to prove in any case under this rule is that the aircraft fell. He would not be in a position to show that the fall was due to negligence.

(b) The person injured, or whose property is damaged, is allowed to recover unless the owner or operator of the aircraft is able to prove that the injury or damage sustained was not due to any negligence on his part. In law this rule is called the *res ipsa loquitur* or *prima facie* doctrine. It has been suggested by a number of writers that this rule would be unfair to the person injured or damaged, because he never would be in a position to question any excuse given, and because he would not be able to test the truth of any statement or defense made by the operator or owner of the aircraft.

(c) The third rule is that of absolute liability. Under this rule, the person injured or damaged is allowed to recover regardless of any question of negligence except that of his own. This rule has been put forward on the theory that a person engaged in a dangerous pursuit or operating a dangerous machine is liable for any damages sustained thereby. Of course, it is objected on the part of those interested in aircraft, and in the furtherance of flying, that it is unfair to regard flying as a dangerous pursuit, or aircraft as a dangerous instrument or machine. It has been pointed out, however, that the absolute liability of aircraft to persons on the ground need not depend upon this theory; that it is sufficient that the courts recognize the

fact that here is a new instrumentality to which the old rules cannot apply, and to which, in order to prevent injustice to innocent persons, a new rule should be fitted.

VII. The rule of absolute liability (described in Paragraph 6 (c) *supra*) is the one which is reflected in legislation on this point. The Aircraft Act of 1920, adopted by Great Britain, provides that where material damage or loss is caused by an aircraft in flight, taking-off, or landing, or by any person in any such aircraft, or by any article falling from any such aircraft, to any person or property on land or water, damages shall be recoverable from the owner of the aircraft in respect of such damage or loss, without proof of negligence or intention, or other cause of action, as though the same had been caused by his wilful act, neglect, or default, except where the damage or loss was caused by or contributed to by the negligence of the person by whom the same was suffered.

The Uniform State Law of Aeronautics provides that the owner of every aircraft is absolutely liable for injuries to persons or property on the land or water caused by the ascent, descent, or flight of the aircraft or the dropping or falling of any object therefrom, whether such owner was negligent or not, unless the injury was caused in whole or in part by the negligence of the person injured or of the owner or bailee of the property damaged.

VIII. *Air traffic rules.* Section 3e of the Air Commerce Act of 1926 provides the Secretary of Commerce shall by regulation

"establish air traffic rules for the navigation, protection and identification of aircraft, including rules as to safe altitudes of flight and rules for the prevention of collision between vessels and aircraft."

Section 11 provides that it shall be unlawful

"to navigate any aircraft otherwise than in conformity with the air traffic rules."

The Air Commerce Act of 1926 was enacted by Congress by virtue of its power to regulate interstate commerce. There is a fairly general consensus of opinion now that these provisions are constitutional. It was suggested at one time that the federal constitution be amended for the purpose of regulating air traffic, but the later opinion seems to be that Congress already has the power to effect such regulation without any constitutional amendment. The regulations of traffic provided for apply to all aircraft whether engaged in interstate commerce or not. The right of Congress to regulate aircraft not engaged in interstate commerce is upheld on the authority of decisions of the Supreme Court of the United States, to the effect that Congress has the undoubted power to regulate *intrastate* commerce where such regulation is necessary to prevent interference with *Interstate* commerce. It is believed that by reason of this power all air traffic may be regulated under the Air Commerce Act, through rules created by the Secretary of Commerce.

IX. One of the many interesting questions which already have arisen in connection with aviation law is in respect of the liability of persons who volunteer aid or assistance in carrying on airports or flights. More particularly the question has arisen whether or not the owner of property abutting on an airport or landing field who, for the benefit of the airport and those engaged in flight to and from it, undertakes to illum-

inate the buildings on his land or to maintain beacons of light, may be subjected to any liability for injuries sustained by reason of the failure of such lighting or beacons.

Those engaged in flight might come to rely on the lights maintained on such abutting property. Accordingly, if such lights failed, damage might be sustained by reason of collision with such darkened buildings. The failure of the lights on such a building might be due to pure accident or to the negligence of the owner who had volunteered to maintain them, or to some other cause or causes, including the lack of due care on the part of the aviator. In the case of pure accident there would be no liability upon the owner of the building with respect to the collision, unless it could be said that he was under an absolute duty to maintain such lights. The owner of such a building probably could not be regarded as an insurer of the lights or lighting and accordingly, it is probable that no absolute liability would attach to him. On the other hand, he probably would be held liable for any negligence on his part; that is to say, for any breach or omission of the legal duty he had voluntarily assumed.

It has been held many times that where a person makes a gratuitous undertaking and actually enters on the execution of it, he may be held liable for any damage sustained which is due to his negligence in performing that duty.

Another angle of this question which will have to be taken into consideration is that of due care on the part of the owner or the operator of the aircraft. If the aircraft flies in a negligent manner, or at a height so low as to be inconsistent with safety, it probably would be impossible to recover damages from the owner who has gratuitously undertaken to furnish the lights. The law on this and other similar questions undoubtedly will be developed soon.

X. *What the National Association may do with respect to aviation.*

(a) Encourage and promote the adoption of the Uniform State Law of Aeronautics in all of the states. Undoubtedly one of the chief aids in the development of aviation must be uniformity of laws and rules. The National Association is equipped from the standpoint of organization to work effectively for Uniform State Laws. Such work can be carried on through the State Association with the aid of the various constituent boards in the state.

(b) If there is any substantial objection to the rules which have been promulgated by the Secretary of Commerce under the Air Commerce Act, the National Association can take them to the Secretary, with suggestions as to the changes it feels should be made.

XI. *Uniform State Air Licensing Act and Uniform State Airport Act.* A Uniform State Air Licensing Act and a Uniform State Airport Act have been proposed to the National Conference of Commissioners on Uniform State Laws, and have been referred to the Uniform Public Acts Section, of which I am Chairman. These Acts will receive attention by this Section during the next few months, and a report will be made on them at the next meeting of the National Conference which will probably be held in Chicago in connection with the annual meeting of the American Bar Association next summer.

NATHAN WILLIAM MACCHESNEY,
General Counsel.

FOREIGN CASES*

(1) Anonymous¹

An attempt to exclude the application of the provisions of the air law statute which provides for the liability of air carriers for damages suffered by passengers is null and void as being against public policy.

A passenger who had paid his fare for a circular flight came, when the plane landed, in contact with an article in the cabin and was injured. He sued the owner of the plane for damages. The court found in his favor.

According to § 19 of the Air Travel Statute of August 1, 1922, the owner of a plane is liable to damages if in connection with the use of the plane some one is killed, or his body or health is injured or his property is damaged. The occurrence which leads to liability must have taken place while the plane was being operated. This at least extends to the time when the plane comes to a halt. Whether what happened when it landed is to be considered need not be discussed as the occurrence took place before there was any possibility of leaving it.

The "accident" must have caused the damages sued for. An accident is a sudden occurrence which gives damaging characteristics to an event otherwise harmless and happening while the plane is being operated. This was the fact here. Through a mysterious cause the landing was connected with a shock which in turn caused the damages.

The Air Travel Statute, like the statute in regard to liability (*Haftpflichtgesetz*) and the law in regard to auto vehicles, is bottomed on the basis of liability for damages without the necessity of showing negligence if the damage occurs in connection with the operation of the plane and the dangers connected therewith.

The Air Travel Statute even goes farther than the two laws just mentioned which exclude liability if there is force majeure or unavoidable accident. It permits as the only excuse the negligence of the plaintiff. Along this line defendant makes no contentions.

The only question which remains is whether the defendant can by adding an exemption provision to the ticket exclude the application of the Air Law Statute. The question, even excluding personal damages which, if intended to be covered, would have undoubtedly been stressed, must be denied on general principles. Though it may be admitted with Bredow-Mueller (*Air Law Statute Annotations* to § 19, subsection 2a 1) that the owner of a plane may in a single case limit his liability, since the claim according to § 19 is of a private nature, yet there are against a general exemption clause strong legal and moral objections, particularly when it comes to circular flights at a popular bath where a great number of guests daily grant themselves the pleasure of a flight. The air with its currents contains for its traveler greater danger than does the railroad track or the highway. The stringent liability created by § 19 which is unprecedented in legislation has the purpose of affording to the citizen during the use of aircraft, which are more and more becoming means of transportation, all imaginable safety which the developing technical science can only afford to a limited degree. This is so at least to the extent of giving him the right to damages to be mitigated or excluded only through his own fault. It is necessary for legislation to take this course even as an inducement to technical improvements in air navigation. The exemption of liability for personal injury contended for by the defendant therefore is against public policy. The contention of the defendant that the aircraft liability risk is only a small part of the possible claim for damages

*Translated by Professor Carl Zollmann, Professor of Law, Marquette University Law School; member Advisory Board, AIR LAW INSTITUTE.

1. *Amtsgericht in Emden* (1925). Reported in 44 *Eisenbahn und Verkehrsrecht Entscheidungen* 237; 1 *Zeitschrift für das gesammte Luftrecht* 55; 10 *Révue Juridique de la Locomotion Aérienne* 503.

according to § 19 is not well taken. If the defendant admits liability toward a person who is not in privity of contract with her, she cannot in justice refuse damages to a passenger for injuries happening during the operation of the plane. The contention of the plaintiff is well taken that the greatest possible protection must be afforded to those who through using aircraft as passengers essentially contribute toward the support of aerial navigation and afford it the means of further development. It is exactly the very fact that aerial navigation is becoming more and more a means of transportation which demonstrates the necessity of making it increasingly safe through the most stringent enforcement of liability. An exemption such as defendant contends for emasculates the statute.

In closing it should not be overlooked that § 29 contemplates insurance as a condition precedent to a license for the operator and as a means of securing damages. This part of the statute also supports the construction heretofore announced in this opinion that an exemption of liability for personal damages is in conflict with the purposes of the statute. It is of no consequence whether the air ministry is informed of the fact that insurance companies insure only when conditions excluding liability for personal damages are exacted from the passengers. The ministry merely supervises the enforcement of the Air Travel Statute. Its orders are not binding on the courts.

(2) Anonymous²

A provision in an air travel ticket by which the carrier exempts itself from liability for damages suffered by passengers is not against public policy but is valid.

According to § 19 of the air commerce act of August 1, 1922, the owner of an aircraft is liable for the damages which a third person during its operation suffers in his body or health. This general rule however may be changed by contract. Neither the form nor the purpose of the statute which concerns itself with the protection of individuals force one to assume that the legislature had the purpose of denying this right to contract any more than in any other case. Where therefore there is a particular contract for exemption such contract does not conflict with § 19 of the air commerce act.

The fact that such exemption provision is in a general form printed on the tickets bought by the individual passengers does not make it invalid. At the present time the general public is not so imperiously and exclusively dependent on the use of airways that such an exemption amounts to the exploitation of an economic monopoly and as such is against public policy. The plaintiff therefore cannot succeed if the conditions printed on the ticket have become a part of a contract.

The lower court has presumed too much. Plaintiff received the ticket. It was his duty, since the operation of aircraft was inherently quite dangerous, to conclude that the ticket would contain special provisions and to study intently all these provisions. By silently accepting the ticket he submitted to the conditions contained in it and cannot be successful in a claim that he paid no attention to it.

Plaintiff therefore according to § 272 subsection 2 BGB is entitled to damages only if defendant was guilty of deliberate wrong. Since he cannot prove that the defendant has been remiss in his duty of care the defendant whose intention undoubtedly was to exclude all liability to the utmost extent permissible by law is not liable. The complaint should have been dismissed.

(3) Z v. S³

A provision by which an air passenger waives for himself and his legal representatives all claims for damages

2. Landesgericht, Aurich, July 28, 1926. 1 Zeitschrift für das gesamte Luftrecht 222.

3. Reichsgericht, May 19, 1927. Reported 1 Zeitschrift für das gesamte Luftrecht 196. Affirming 46. Eisenbahn und Verkehrsrecht Entscheidungen und Abhandlungen 93.

occurring mediately or immediately through the use of the aircraft or in connection with an air journey to himself or his property will not be construed to exempt the air line company from liability caused by its own fault.

STATEMENT OF FACTS

An aircraft passenger on a regular route was mortally wounded in consequence of an emergency landing effected July 22, 1925. The by-laws of the company contained the following passage:

"The participation in flight and the transportation of baggage is at the exclusive risk of the passenger so far as the company and its successors, employees and agents are concerned.

By participating in flight the passenger waives for himself and his legal representatives all claims for damages occurring mediately or immediately through the use of the aircraft or in connection with an air journey to himself, his personal effects or his baggage.

Particularly there will not be any claim for damages in consequence of being excluded from the aircraft or because an air voyage is belated or is interrupted. There is no claim for a refund of the compensation paid if a passenger who has made reservations does not arrive or arrives too late at the airport."

These by-laws were with the exception of the second paragraph printed on the rear of the ticket which had been signed by the passenger.

The heirs sued the company and the pilot jointly for damages. The lower court decided against them (note, compare ZLR 1, S. 220 ff). An appeal was allowed.

CONCLUSIONS OF LAW

The question is whether and to what extent in July, 1925, the owner of an aircraft could exempt himself and his pilot from liability toward a passenger and his legal representatives for mishaps occurring during a flight growing out of the air law statute and out of misfeasance and whether and to what extent such a contract was actually made with the deceased in the present case.

The first question even excluding malfeasance (§ 276 subsection 2 BGB) and conduct otherwise against public policy may be answered in the affirmative. It is not expressly regulated in the air law statute. The imperial liability statute (Reichshaftpflichtgesetz) and § 844 subsection 2 BGB and the statute regulating traffic in automobiles (FKG) are analogous. According to the imperial liability law a railroad company may *not* exempt itself in advance from liability particularly for damages to the heirs of the deceased passenger or limit such liability. In § 844 subsection 2 BGB such a prohibition is absent. Precedents indicate that such an exemption within the lines drawn by the statute (§ 276 subsection 2 BGB) and by the judicial construction of § 138 BGB may be stipulated in advance. (RGZ. Vol. 65 page 315 etc.). No such construction was called for in regard to KFG since the owner and chauffeur of an automobile according to § 8 No. 1 KFG are not at all liable for damages to a passenger or his heirs. A similar provision was according to the first draft of the air law statute of January 31, 1914, intended for this statute. (RT. 1912-1914 No. 1338.) This provision was abandoned in the second draft of July 8, 1921. The view that the aerial passenger voluntarily assumes the danger was in this second draft overruled by the view that damages paid to the unfortunate passenger by the aircraft owner promotes the public purpose of aviation. However the annotation to §§ 15 and 16 adds at the end that the right of the owner to limit his liability within proper limits by special arrangements is not affected by the law. (RT. 1920-21 No. 2504 page 2474.) It would be beyond reason if after the full development of air navigation the general public were dependent on the use of such navigation to allow the air companies to misuse their monopoly

and the helpless situation of the public to force passengers to waive the protection which the statute gives them. But such a situation did not exist in 1925. There was then very little flying. Aerial passenger transportation on schedule though begun by the Aero-Lloyd and the Junker concern was in its initial stages and flights were almost exclusively over non-city areas and over water. It therefore was not then against public policy when the young industry attempted by special contracts to impose the rather unknown dangers of aerial transportation as much as possible on the passengers.

In regard to the second question there can be no doubt but that liability (§ 19 etc. of the air law statute) in the present case was excluded by accepting the ticket with the conditions as they were printed on the back side and this at the latest when the ticket was signed. Defendants contend, however, that this exemption extends to mishaps which are due not only to the inherent dangers connected with a regular and careful flight but covers those as well which are due to the unambiguous and clear fault of the owner or pilot of the aircraft. This contention is overruled. The construction of the general transportation conditions formulated by the air company through whose acceptance this particular exemption is supposed to have come into existence is for the Revisionsgericht. (Komm. v. RGR 5th ed. BGB 133 annotation 2 subsection 2.) To the extent to which these conditions impute to the passenger a waiver of legal damages the construction should be strict and great clearness of expression should be demanded. Generally in such a construction only the *declared* will of the contracting parties can be regarded and the air company must allow the conditions formulated by itself to be read in the light in which the passenger would read them in good faith and in accordance with the generally accepted ideas concerning transportation. The wording of such a provision is even of less importance where it is capable of a double interpretation.

That air traffic is inseparably connected with special dangers was well known in 1925. They were considered greater then than now. It was *these* dangers which the passenger would think of when he heard that he was to assume the risk and waive the liability of the aircraft owner. The thought of a complete waiver of any damage caused by the fault, perhaps the gross fault, of the owner was more foreign to his thinking. To cover such a waiver he was entitled to a notice which could not be misunderstood. This was not the case here. The conditions printed on the rear of the ticket merely state that participation in flight is at the exclusive risk of the passenger and do not state that such passenger thereby waives all claims for damages occasioned by the fault of the owner or pilot within the meaning of §§ 823, 831, subsection 276, 1 BGB. The second paragraph of the general transportation conditions cited above which at least uses the word "waiver" is not printed on the ticket. The trial court has not found that the passenger knew about them generally, or learned of them in any way when he bought his ticket or even that they were posted in the ticket office or shown specifically to him. There was no particular reason to induce the passenger to inquire about them because the general conditions were printed on the back side of his ticket and he was entitled to assume that such conditions were there printed correctly and essentially exhaustively.

The third paragraph printed on the ticket does not support the construction proposed by defendants. It deals essentially with claims for damages because a passenger is excluded or with delay or interruption of a flight—in other words with necessities growing out of the nature of aerial transportation but not with damage claims growing out of the fault of the owner or pilot in equipping the aircraft, in selecting, instructing and supervising the pilot or in contending with the dangers which adhere particularly to aerial navigation. It was not necessary that the passenger know that the employees mentioned in the first paragraph, in contrast to § 18 KFG are not legally liable. It could not be expected that he deeply ponder the meaning of the provision dealing with such employees. On the contrary it would have been very easy for the defendant to express the meaning which he now contends for more clearly. A few additional words would have been all that was necessary.

A reversal becomes necessary. The case (§ 565 Abs. 3 No. 1 ZPO) is really not ripe for decision. There is no finding on the question whether the passenger for some particular reason possibly was acquainted with the construction placed by the aircraft company on the controverted provision and whether an essential fault on the part of the owner or pilot of the aircraft was present and whether the company-defendant was the owner of the aircraft within the meaning of paragraph one.

Reversed for a new trial.

(4) **L. v. Aero Lloyd A. G. und H.**⁴

A provision by which an air passenger waives for himself and his legal representatives all claims for damages occurring mediately or immediately through the use of the aircraft or in connection with an air journey to himself or his property will not be construed to exempt the air line company from liability caused by its own fault.

In the evening of July 22, 1925, a Fokker monoplane type F piloted by defendant which flew between Mannheim-Baden-Baden-Stuttgart-Munich while on its way to Munich lost its way in the darkness and crashed when it attempted an emergency landing at 10:30 in Switzerland north of Zurich. In consequence General Director Dr. L. who had boarded the plane in Baden-Baden was mortally wounded. He had bought his ticket in the travel bureau of the agent W. L. in Baden-Baden who was the agent of defendant but who also represented the South-German Aero Lloyd A. G. in Munich. Both companies belong to the Aero Lloyd concern. The transportation conditions of the concern as introduced in evidence contain the following provisions:

3. Participation in flight and the transportation of baggage is at the exclusive risk of the passenger and his legal representatives as against the airline company, its employees and ticket selling agents.

The passenger by accepting air transportation waives for himself and his legal representatives all claim for any damage or injury occurring mediately or immediately to himself, his personal effects and his baggage during or in connection with a flight.

A claim for damages in consequence of being excluded from a flight in consequence of delay in, or interruption of, a flight is particularly excluded. There is no claim for a repayment of the price charged if the passenger does not arrive at the airport or does not arrive in time.

These provisions excepting the second paragraph are printed on the rear side of the ticket which was signed by the passenger.

His widow demands damages under paragraph 21 of the air commerce act of August 21, 1922, and on account of malfeasance (§ 844 Abs. 2 BGB). She claims that the plane started too late from Stuttgart, was not sufficiently lighted to enable the pilot to read the compass, that the pilot was not competent to do night flying and had no opportunity to communicate with the passengers before the emergency landing. Defendant contends that not it, but the South-German Aero Lloyd A. G. is the owner of the plane and that it through its agent the pilot was conducting the flight. Both defendants contend that all liability was excluded by the ticket.

Both lower courts have ignored the first contention but have denied plaintiff relief on the ground that the passenger had waived damages. The appeal to the intermediate court led to a reversal of the judgment below and to the ordering of a new trial.

REASONS

The question is whether and to what extent in July, 1925, the owner of an aircraft could for himself and his pilot as against the passenger and his

4. Reichsgericht 1927. 56 Juristische Wochenschrift 2210, 117 Entscheidungen des Reichsgerichts 102, reversing 1 Zeitschrift für das gesamte Luftrecht 220.

legal representatives through transportation conditions exclude liability for mishaps under the air commerce statute and from malfeasance and whether and to what extent in the present case such an arrangement was actually made with the passenger.

The first question may even, excluding with the intermediate court any liability for deliberate acts (§ 276 Abs. 2 BGB) or conduct contrary to public policy (§ 138 BGB), be answered affirmatively. It is not specifically touched upon in the air commerce act.

The Reichshaftpflichtgesetz, § 844 Abs. 2 BGB and the statute concerning automobiles are analogous. According to paragraph 5 of the first statute the owner of a railroad may not in advance through a contract exclude or limit liability for the damages suffered by the dependants. In § 844 Abs. 2 BGB such a prohibition is absent. Precedents indicate that such an exemption within the limits of the lines drawn by the law (§ 276 Abs. 2 BGB) and the judicial construction of § 138 BGB may be agreed upon in advance. (RGZ Bd. 65 S. 315.) The automobile law did not have to confront this question because neither owner nor chauffeur are according to § 8 No. 1 KFG responsible for injury to the passenger or his heirs. A similar provision was contemplated according to § 16 of the first draft of the law of January 31, 1914. (RT. Drucks. 1912-14 No. 1338.) When the law was passed this provision was omitted as suggested by the second draft of July 8, 1921. The viewpoint that the passenger assumes the danger voluntarily was in this second draft overruled on the ground that a liability for damages to a passenger who has been injured as against the owner of the plane advances the development of flying which is in the public interest. However, the annotation to §§ 15 and 16 adds at the end that the right of the owner to limit his liability within the permitted lines by special contract is not affected thereby. (RT. Drucks. 1920/21 No. 2504 S. 2474.) It would be beyond reason if after the full development of air navigation the general public were dependent on the use of such navigation to allow the air companies to misuse their monopoly and the situation of the public to force passengers to waive the protection which the statute gives them. Such a situation of the public did not exist in 1925. There was then very little flying. Regular flight conducted by the Aero Lloyd and the Junker Concern was then in its initial stages and the flights were almost exclusively over the open country and over water. It therefore was not then against public policy if the young industry attempted to unload by contract its liability for mishaps on the passengers particularly since no data were then available on which to base an estimate of the damages that might be expected.

In regard to the second question liability (§ 19 fgl. LVG) was in the present case through the buying of the ticket or at the latest through the signing of it and the consequent acceptance of the transportation conditions printed on the rear without question excluded. Defendants contend that this exemption extends to mishaps which occur not in connection with the dangers which are inherently connected with a regular careful or at least orderly flight but that it includes mishaps due to the clear and unambiguous fault of the owner or pilot. This contention must be overruled. The construction of the general transportation conditions formulated by the Aero Lloyd concern through whose acceptance also this exemption is supposed to have come into existence is still to be made by the Revisionsgericht. (Komm. v. RGR zum BGB 5 ed. § 133 annotation 2 paragraph 2.) To the extent to which these conditions impute to the passenger a waiver of damages they are not to be construed liberally and great clearness of language will be demanded. Only the declared meaning of the contract controls and the company must be satisfied with a construction such as the passenger would in good faith and in accordance with general ideas of transportation formulate. The wording is alone even of less importance where, as here, a twofold interpretation is possible.

That aerial transportation is connected with special dangers was generally known in July, 1925. They were estimated as greater then than now. It is these dangers which the passenger would consider when he heard that

he was exclusively to shoulder "the danger" and was to waive the liability which the law imposed on the company. The idea that he was waiving liability for the fault of the owner and pilot perhaps the gross fault was foreign to his thinking. Such an exemption he was entitled to expect would not be imputed to him unless it was brought to his attention in a very obvious and entirely unambiguous manner. Such was not this case. The transportation conditions as printed on the rear of the ticket merely say that participation in flight is at the exclusive risk of the passenger but do not say that he waives all liability of owner or pilot for their own fault within the meaning of §§ 825, 831, 276 Abs. 1 BGB. The second paragraph of the general transportation conditions as reported in the statement of facts which uses the word "precaution" is not reprinted. There is no finding that the passenger knew about this paragraph or that the construction of it by the defendant was in any manner brought to his notice when he bought his ticket or signed it or that the complete transportation conditions were posted in the ticket office or pointed out to him. There was no particular reason why he should enquire about them because the general conditions were reprinted on the rear of the ticket and he was entitled to assume that such reprint was correct and essentially exhaustive. The paragraph of the judgment below which counsel for the defendant has stressed at the oral argument merely expresses the thought that the passenger could construe the conditions relative to participation in flight which was to be "at the exclusive risk of the passenger" in no other manner than it has been construed by the opinion below. This would be true only if the construction of the trial judge were correct. But such is not the case. What is stated in the controverted judgment is not sufficient to justify the assumption that the company has demanded a waiver to the extent contended for with sufficient clearness or that such demand despite the ambiguity of the conditions printed on the ticket was for particular reasons known to the passenger. (JW; 927 s. 1248 No. 3.)

The third paragraph of the conditions reprinted on the ticket, as well stated by the plaintiff, contains nothing which is helpful to the defendant. This paragraph deals essentially with damage claims in consequence of exclusion from flight or in consequence of a passenger being late or because a flight is interrupted in other words with necessities which grow out of the nature of aerial navigation but not with damage claims in consequence of the fault of the owner or pilot occurring in equipping the aircraft or in selecting, instructing or supervising the pilot or in duly fighting the peculiar dangers inherent in aviation. It was not necessary that the passenger should know that the "employees" mentioned in the first paragraph—contrary to § 18 KFG—were not within the meaning of the air commerce act liable. It could not be expected that he would deeply ponder the meaning of this paragraph dealing as it did with employees. On the other hand it would have been easy for the company to express the meaning of the condition which it now contends far more clearly by the use of a few additional words.

The judgment must be reversed. The case is not ready for decision. (§ 565 Abs. 3 No. 1 ZPO.) It still has to be found whether the passenger for some peculiar reason possibly did know about the meaning of the controverted paragraph which is now contended for by the defendant and on the other hand whether there was any essential fault of the owner or pilot and whether the defendant was in fact the owner of the aircraft.

(5) Anonymous⁵

An air passenger is not guilty of negligence if he does not tie himself down with a belt as required to do by a poster where no belt is furnished for this purpose and the seats are loose.

A passenger who does not know the language in which an exemption provision is printed on the ticket which he

5. Zivillandesgericht in Prague October 26, 1927. 2 Zeitschrift für das gesammte Luftrecht 56.

buys will not be presumed to have made a valid contract for the exemption stipulated for in such provision.

To be valid an exemption contract by which an air carrier is to be exempt from liability for damages to the passenger must be the deliberate and definite declaration of the parties. A one-sided assertion through the handing over of the ticket to the passenger without expressly calling his attention to the exemption clause is insufficient.

On the basis of the pleadings and the testimony of the witnesses the court finds that plaintiff on June 3, 1926, made a contract with defendant company in consequence of which he on the same day at 1:45 P. M. voyaged in one of the company's aircraft for a consideration from Prague to Vienna, the pilot being the codefendant F. L. In the neighborhood of Goltsch-Jenikau motor trouble developed which necessitated an emergency landing on a potato field. The aircraft turned over and plaintiff suffered injuries consisting of a dislocation of his right foot (*luxatio pedis sub talo*), bruises on his skin, coagulation of his blood in his right thumb making this member partially useless and an odematose swelling on his forehead.

According to the provisions of §§ 29 and 32 of the statute of July 8, 1925, Zl. 172 Slg. d. G. u. V, the owners of aircraft and their pilots are obligated to make good the damages if through the operation of the craft persons are injured or killed or personal property is damaged. Therefore the defendant company as owner of the craft and the codefendant pilot F. L. are responsible for the damages caused to the plaintiff.

Defendants would be exempt from this liability if they could prove that the event which caused the mishap was caused through the fault of the plaintiff or that of third persons. (§ 31 of the law above cited.)

Defendants contend that plaintiff was himself the cause of the mishap because he did not tie himself down with a belt though he was warned to do so by a notice printed in red ink on the first page of his ticket.

The court on the basis of the testimony of the witness J. W. S. finds that there was no belt in the aircraft which could be used for this purpose and in addition that the seats were loose so that even the layman must conclude that plaintiff had he tied himself to a seat would not only have, when the aircraft turned over, been prevented from being thrown against the ceiling but might have suffered far more serious consequences. The defendants therefore have not demonstrated that the mishap was caused through the fault of the plaintiff.

It remains to decide whether the ticket contains a valid and binding exemption provision, as defendants contend for.

According to the terms of § 39 of the statute of July 8, 1925, Zl. 172, Slg. d. G. u. V. it is possible by a provision to exclude in advance the application of the terms of § 82 subsection 2 of the statute cited. According to these terms the above cited provisions of § 29 of the statute cited apply in regard to claims for injury or death of persons or damages to goods if the aircraft is used for compensation or as a common carrier.

On the basis of verbal testimony and the tickets themselves the court finds that the witness F. St. who as chauffeur of the defendant brought the plaintiff and his fellow passengers to the aviation field, handed to plaintiff when he left the automobile his ticket which was so attached to a copy of the by-laws that it projected from them. The by-laws and ticket were in exactly the same condition in which the passenger had received them from the ticket office of the defendant company and the passenger had not been instructed concerning them nor had the witness F. K. who was the ticket agent who had sold the ticket, negotiated with the plaintiff at any time concerning any conditions in them.

The court on the basis of the tickets which are in evidence, namely, Lit. C orig. and No. 3 orig., finds that on the front page the provisions which

defendants stress are printed in red^a in the Czecho language as to both tickets and that on the rear an excerpt from the by-laws is printed including the ones stressed by defendants^b on ticket C orig. in the French and on ticket No. 3 orig. in the Czecho language.

Plaintiff says that he knows neither the Czecho nor the French language and that defendant has in no ways proved that he before he started his trip obtained information concerning these by-laws printed on the tickets as it was defendants' duty to do. Under these circumstances it cannot be assumed that plaintiff through the silent acceptance of the ticket has consented to the by-laws and hereby made a valid contract to exempt defendant from liability for the damages which plaintiff suffered as the provisions of § 39 of the statute of July 8, 1925, Zl. 172 Slg. d. G. u. V. assume.

In conclusion the court is of the opinion that since such an important result as the exemption from liability in the operation of aircraft in transporting passengers is in question there must be a deliberate and definite declaration of the will of both parties to bring about a valid contract of exemption such as is contemplated by § 39 of the above-mentioned statute. A one-sided and insignificant assertion through the handing over of the ticket to the passenger without expressly calling his attention to the exemption clause is insufficient.

The complaint, so far as it is objected to, is therefore well founded.

Judgment below affirmed.

a. "By undertaking this flight the passenger obligates himself to abide by the by-laws printed on the reverse side," further, "the company assumes no risk concerning transportation or for the acts of its employees in control of the aircraft in the absence of a written contract," and finally, "The P. T. passengers are urged in the interest of their own safety to tie themselves to the belts which are for this purpose attached to the seats."

b. "The liability of the company: This provision includes a declaration by the company that it assumes no responsibility for any risk in aircraft transportation or for any acts of its employees in charge of the aircraft in the absence of a specific written contract" "that furthermore neither the company nor its employees can be made responsible for losses or damage which may happen to the passengers or their baggage during a trip" and "that the company is not responsible for any act of commission or omission of its officers, pilots, mechanics or other employees who are in any capacity connected with its air service," and finally that "the passengers must bear all the consequences which result from these circumstances."

PROPOSED UNIFORM PASSENGER CONTRACT*

In consideration of the issuance to me of this ticket for transportation, I hereby agree as follows:

ONE: (1) That said ticket represents a revocable license and that the company or companies represented herein may, with sufficient cause to it or them, decline to carry me, and in that event the sole responsibility of the company or companies shall be to refund to me, through regular channels, the price paid by me for said ticket; (2) that if I am accepted as a passenger, I voluntarily assume the ordinary risks of air transportation and stipulate that the company or companies represented herein shall not be responsible save for its or their own neglect of duty; (3) that after the commencement of the flight, I may be landed or discharged in such manner and in such place or places as the pilot, in his sole discretion, shall see fit, and in that event the only responsibility of the company or companies named herein shall be to refund to me such proportion of the price paid by me for this ticket as the distance between the place of landing and the place of destination bears to the whole length of the flight for which this ticket has been issued.

****REASON:** (1) This clause is deemed necessary on account of changing weather conditions and the possibility of an unexpected overload of mail on the lines which carry combined mail and passenger traffic. The clause further gives protection to the company in case prospective passengers present themselves for transport and their presence in the plane might be obnoxious.

(2) Your committee deems this clause the most important of the whole contract. If, while the industry is young and the courts and public are taking kindly to the aviation industry, this clause can be adjudicated and upheld in the appellate tribunals, needless to say, the advantages that will accrue to the carriers are obvious. If it is not upheld, your committee believes that the only other alternative will be statutory legislation in the various states which will meet the situation.

(3) This clause is necessary on account of forced landings caused by inclement weather, faulty equipment and the like. The limitation of liability has been fully considered by the committee and is thought to be adequate protection for the carriers.

TWO: (4) That this ticket is non-transferable and if presented for passage by any person other than myself may be taken up and cancelled without refund. (5) The presentation of this ticket and the use of it by any person other than myself shall be considered a fraud and trespass upon the company or companies.

REASON: (4) It is necessary that the contracting party use the ticket. Otherwise, the company would be without the protection afforded

*Submitted by the American Air Transport Association, by the Committee on Uniform Ticket Contract and Standard Ticket Forms, with Mr. J. W. Brennan as Chairman, and Mr. Howard H. Wikoff, as Counsel for the Am. Air Transport Association.

**The explanations, set out in bold-face type, of course do not appear in the contract, but are set forth to explain the position of the Committee in drafting the ticket contract.

by the contract. This clause is likewise a protection to the purchaser when the ticket is lost or stolen.

(5) The committee has deemed this clause as submitted sufficient to insure the protection of the carrier should situations arise which might invoke the provisions of the clause. Many tickets submitted by carriers add after the word "companies" the following clause, "And it is agreed that the company shall owe no duties to such trespasser." This is an incorrect statement of the law. A carrier is liable to a trespasser or a mere licensee wilfully or wantonly injured by its servants, as was held in *New York Central Railroad vs. Mohnney*, 252 U. S. 152.

THREE: (6) I further agree that the company or companies represented herein shall not be liable for any loss or claim arising out of delay or failure, for any reason, with or without advance notice, of aircraft to depart from any point or arrive at any point according to any schedule, agreement, statement or otherwise, nor for any loss or damage or injury to any person or property, arising out of such condition or otherwise, except negligence upon the part of the company or companies represented herein.

REASON: (6) This clause must be considered together with clauses 1, 2 and 3 of paragraph one. The *Railroad Company vs. Lockwood*, 84 U. S. 357, is the leading case on contract limitations by a common carrier as to liability not only as a carrier of goods but also as a common carrier of passengers, and it was with full consideration of the law as stated in that case that clause (6) is submitted. Public policy will be a great determining factor on the final determination by appellate tribunals on the question of limitation of liability in aviation law. If a contract of carriage is unfair and against public policy, it might not be allowed in evidence in the trial court and it certainly could not be sustained in any supreme court. Any attempt to limit liability of the carrier where it is caused by the carrier's negligence or misfeasance is certainly against public policy and, in the opinion of your committee, would be so held by the various supreme courts of the land. No attempt has been made to force the public to adhere to the theory that airplanes traveling on scheduled flights and carrying passengers for hire are private carriers. The *Railroad Company vs. Lockwood*, 84 U. S. 357, clearly states that the test is not in what you say you are but in what you are actually doing. There is hardly a company that has submitted its ticket form to your committee that is not, in the opinion of a majority of the committee, a common carrier and would be adjudicated such in any supreme court of the land.

FOUR: (7) The air transport company is not responsible beyond its own lines and in selling this ticket and checking baggage thereon for transportation beyond its own lines, this company acts as agent for the other transportation agency or agencies. (8) The liability of the air company for loss or damage to baggage and/or personal property is limited to the amount of \$100.00, unless a higher valuation be declared and an additional charge paid therefor.

REASON: (7) In the preparation of this ticket the committee has deemed it advisable to make provision for the future development of the aviation industry. The day is not far distant when one air company will

issue an interline air ticket, collecting the fare for the whole journey over the various lines named in the contract. This necessitates clause (7) on the limitation of liability beyond the selling line which, in the opinion of the committee, this clause adequately provides. The committee wishes to advise that an agreement is now being drafted which will provide for interline ticket selling arrangements properly safeguarded both from a liability and a financial viewpoint, which, when put in operation, will undoubtedly lead to greater convenience to the air traveling public.

(8) The only question that arises in this clause is as to the value of the baggage. Because of the fact that all of the railroads have a \$100.00 limitation, it was deemed that for the purpose of uniformity this amount should be used in the contract. The committee deems that this is a fair figure both from the standpoint of the public and the airplane companies.

SENATE BILL 3522

A bill to amend section 9 of the Act entitled "An Act for the regulation of radio communication, and for other purposes," approved February 23, 1927 (Forty-fourth Statutes, page 1162).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second paragraph of section 9 of the Act entitled "An Act for the regulation of radio communications, and for other purposes," approved February 23, 1927 (Forty-fourth Statutes, page 1162), be, and the same is hereby, amended to read as follows:

"In considering applications for licenses and renewals of licenses of broadcasting stations, the licensing authority shall make such a distribution of licenses, bands of frequencies, periods of time for operation and station power, so as to insure an equality of radio broadcasting service, both of transmission and of reception, to the people of the different States and communities."